
3.3 Additional Tribal Comments

The Services (NMFS and USFWS) have a trust responsibility to Native American Tribes and therefore considered their comments during the preparation of this FEIS. The comments of the Lummi Indian Nation, the Colville Tribe, the Skagit System Cooperative, and the Elwha Klallam Tribe are summarized and, where unique issues were raised, are responded to below. For similar comments already raised, the reader is referred to Section 3.2 of this document for the appropriate response. (**Note: the comments are presented following the same outline as section 3.2, however, only topics commented on are included.**)

Comments relating specifically to this HCP

I. GENERAL COMMENTS

Summary: The Lummi Indian Nation stated that the huge land ownership of DNR magnifies greatly the potential for failing to provide adequate oversight in an agreement that may be in place as long as half a century or more. The Elwha Klallam Tribe supported the aquatic and riparian sections of the OESF strategy. They further noted that other parts of the document appeared less convincing and, if implemented, may increase the risk of extinction to a number of species, including the northern spotted owl.

Response: The Services are aware of the considerable effort necessary to oversee such an agreement on 1.6 million acres. See Section 3.2 -- Compliance Monitoring. The Services also note both the support and concern expressed. The Service's believe the specific concerns are either addressed below by topic or in the corresponding topics in Section 3 of the FEIS.

II. DESCRIPTION OF AREA

Summary: The Colville Confederated Tribe recommended separate HCP's be prepared specific to the different ecosystems, citing the differences between the east- and west-side forests. They believed that the section of the HCP which deals with east-side forests is not adequate to ensure the long-term viability of fish and wildlife species, ecosystem function, or long-term productivity.

Response: The Services agree that the HCP does not address or provide ecosystem functions on the east side. The HCP only addresses listed species on the east side of the Cascade crest; it does not address multi-species (i.e., unlisted species) and is not adequate to provide complete ecosystem functions. Coverage would not be provided in the permit for those unlisted species on the east side.

III. ABIOTIC ISSUES

C. WATER

Summary: The Lummi Indian Nation stated that the proposed HCP does not address how it will meet the requirements of the Federal Clean Water Act. The Services have a

responsibility to see that requirements of this act are followed and would not sign off on the HCP without meeting the criteria of this act.

The Colville Confederated Tribe commented wide-scale fertilization of forest lands has not been evaluated in the DEIS. Fertilization would likely result in increased stream pollution similar to that in farmlands and would likely be detrimental to water quality and could be harmful to fish.

Response: Issuance of an incidental take permit does not diminish the responsibilities or abilities of the federal government under the Clean Water Act. The permit does not provide an exemption to the requirements of that Act. An assessment is provided in the DEIS in sections 4.2.3, 4.3.2, 4.4.2, and 4.8. With regard to fertilization, the Services believe the impacts will be relatively minor. DNR expects to fertilize 30,000 to 115,000 acres in the first decade on the west side and 4,000 to 10,000 acres on the east side. Not all stands are likely to be in a condition where fertilization is a viable option. Take resulting from this activity would be covered by the permit.

IV. BIOTIC ISSUES

A. FOREST HEALTH/FIRE

Summary: The Colville Confederated Tribe wrote there was an inadequate assessment of selective harvest policies and their forest-health effects.

They also stated that fire as a process and maintainer of ecosystem health and function is not addressed. Additionally, the environmental impacts of wide-scale fire suppression and its effects upon long-term species viability have not been addressed at all.

Response: DNR's HCP only addresses listed species east of the Cascade crest. The Services note that selective harvest may aggravate or alleviate forest-health problems depending on site-specific situations, the application of the techniques, and the perspective of forest health. Addressing this issue east of the Cascade crest is beyond the scope of the HCP.

DNR's draft HCP does address forest health issues on page IV.171-172. Underburning and a host of other activities may be used to address the issues of fire, disease, and insects. The Service agrees that forest health problems which are not addressed or exacerbated may lead to the listing of additional species.

A natural fire regime is desirable, but this requires caution to reinstitute where less than natural forest conditions currently exist. This is a complex issue which is beyond the scope of the HCP.

B. SPECIAL HABITATS

8. Riparian Ecosystem Components

e. HYDROLOGIC MATURITY

Summary: The Lummi Indian Nation cited over-harvest of old growth in the Nooksack Basin and channel instability. They stated that much of the instability

can be attributed to stream importation of large amounts of sediment and water in peak flow situations. They state that the HCP does not provide adequate percentages of hydrologically mature forest, which is an important tool in reducing peak flow conditions.

Response: See Section 3.2, III, B, 8 -- Hydrologic Maturity

13. Habitat-based Approach

Summary: The Skagit System Cooperative noted the data imbalance between owls and murrelets and all the remaining species. They stated that dedicating serious effort and funding toward acquiring data about all potentially listed species and their habitats was necessary in order to maintain habitat for those species at a level that is adequate to avoid their becoming listed. For anadromous salmonids, they indicated that the goal should be maintaining the stocks at levels adequate to provide for a viable Tribal fishing industry. They disagreed with the assumption that providing an increased level of riparian protection will fulfill the needs of salmonids and a number of other aquatic dependant species, and they stated that this assumption is not backed up by data. While the riparian proposal may help the habitats of many species, it does not address the species-specific habitats and may fall far short of what is needed by any given species. They used the tailed frog as an example of such a species and also referred to passages in the documents addressing Dunn's and Van Dyke's salamanders. They further stated "there is neither logic nor data to support the notion that the strategy does indeed protect these or for that matter the rest of the species that may be listed in the future that this DEIS is attempting to cover."

Response: See Section 3.2, III, B, 13 -- Habitat-based Approach. The Services believe that in order to adequately address the needs of multiple species, the habitats of those species must be conserved. The DNR HCP, developed with technical assistance from the Services, focused on habitats rather than individual species. The assumption is that the species will benefit if adequate habitats are provided. Most species are dependant on riparian or wetland habitats during some stage of their life-history. Other species, although not dependant on riparian and wetland areas, can benefit from the availability of riparian habitats.

14. Unique Forest Types

Summary: The Colville Tribe indicated that ponderosa-pine ecosystems of the west are some of the most imperilled forest types, with an estimated loss of 92-98 percent of old-growth pine forests. They stated this was primarily due to selective logging and fire suppression and noted that the HCP recommends continuation of those activities--the very practices which have caused many of the forest-health problems so prevalent today.

Response: The Service notes that the HCP specifies amounts of owl habitat to be maintained in certain areas. The HCP does not address which silvicultural prescriptions will be used to achieve those conditions. The Services will make technical assistance available to DNR, if needed, to assist in selecting techniques that are compatible with improving forest health while maintaining wildlife habitats.

D. ANIMALS

1. Wildlife

b. Birds

i. Sea, shore & wading birds

(A) marbled murrelets

Summary: The Lummi Indian Nation compared the incidental take granted to the Bureau of Indian Affairs through the Section 7 process to that proposed by DNR in the HCP. They believed that the rigorous definition of take in terms of numbers and statistical probability was lacking in the HCP. The Nation believed DNR's proposal sidesteps the issue of quantification of take. They referred to the proposal as a clear trade-off of trust responsibility for economics, which is unacceptable to the Lummi Nation.

Response: The focus of the murrelet strategy and assessment is based on the quality, quantity, and distribution of nesting habitat, rather than individual murrelets. See Section 3.2, III, D, 1, b. i, (A) -- Marbled Murrelets.

ii. Raptors

(A) spotted owls

nesting, roosting, & foraging (NRF) habitat

amounts

Summary: The Elwha Klallam Tribe noted that, while the HCP references riparian areas and unstable slopes as providing future owl habitat, riparian areas typically contain a high degree of edge (which may result in high mortality due to predation by species such as horned owls) and unstable slopes typically do not support the necessary habitat features for owls. Unstable slopes commonly contain low tree densities, low standing volumes, and deciduous species of trees and shrubs. It would appear that efforts to account for NRF areas through riparian and unstable slope areas are inappropriate.

Response: The commentor is correct. Narrow riparian areas alone will not provide owl habitat. Riparian areas will, however, contribute to owl habitat when they are adjacent to or surrounded by suitable habitat.

distribution

Summary: The Elwha Klallam Tribe agreed with the overall strategy of protecting available habitat adjacent to federal reserves, in spite of their concern about the permanency of the federal protection measures. They are also very concerned about the exclusion from any demographic support or dispersal roles in both the Strait of Juan de Fuca and southwest Washington. This would appear to considerably increase the risk of local extirpation of owls on the Olympic Peninsula. The Tribe is

opposed to policies which would lead to the local extinction of owls in the Straits area. The Elwha Klallam Tribe noted that the entire premise of the OESF is based on untested theories, especially that stand conditions can be manipulated over space and time to provide habitat. From a risk analysis standpoint, they believe it is prudent to protect the most important habitat in its entirety and rebuild connections to this habitat. They indicated indirectly that they, therefore, preferred an approach similar to the zoned approach.

Response: The Service believes it is appropriate to use the federal lands as a foundation upon which to base large-scale planning efforts. Nonfederal lands in southwest Washington and on the north coast of the peninsula were determined by analysis to be nonessential for spotted owls on the Olympic Peninsula. The OESF strategy is premised on the maintenance of 20 percent old forest and 40 percent suitable habitat in each of the 11 landscape planning units. The protection of the 20 percent old forest will likely occur near existing owl site centers.

iii. Passerines

Summary: The Colville Tribe commented the negative effects of wide-spread pesticide application are well documented in the literature and are implicated at least partially in the severe decline of neotropical migrants.

Response: The Service agrees that pesticide applications can have severe impacts. DNR has committed to retain their restrictive policies with regard to pesticide application. In addition, permit coverage for invertebrates would only be provided for aerial application upon approval of a site-specific plan by the Services.

d. AMPHIBIANS

i. Frogs

Summary: The Skagit System Cooperative indicated that the tailed frog may not be adequately addressed by the riparian strategy. The species prefers cold waters and has a narrow range of temperature tolerance. They cited the widespread extirpation of the tailed frog from areas presently inhabited by salmonids, and this would seem to contradict the notion that what's adequate for salmonids is adequate for other species.

Response: The Services believe that the protection for Types 4 and 5 streams in the HCP is adequate and these areas are the most likely to be inhabited by tailed frogs. In fact, those areas with salmon are less likely to maintain tailed frogs.

e. FISH

i. Anadromous salmonids

Summary: The Lummi Indian Nation said there is a trust responsibility for the federal agencies to work toward protection of a harvestable surplus of salmon and steelhead. The Skagit System Cooperative indicated, for anadromous salmonids, that the goal should be maintaining the stocks at levels adequate to provide for a viable Tribal fishing industry.

Response: The protection for fish under the HCP far exceeds the protection under current state regulations and should help achieve these goals. The Services believe that the riparian protection measures called for in the HCP will play an important role in restoring a harvestable surplus of salmonids. Riparian habitat functions are vital for a number of other species as well.

E. ECOSYSTEM HEALTH

Summary: The Colville Tribe noted the lack of comprehension of the holistic nature of ecosystems and the fact that systems of living communities are inter-dependent and inter-related. They further stated that many of the ecological processes such as insect infestations, forest diseases, and fire (both low-intensity and stand-replacing) are crucial to the continued existence of the ecosystem. To circumvent or discontinue the function of these ecosystem processes has led, and will continue to lead, to high risk where outcomes (including commodity production) are almost totally unpredictable.

The Colville Tribe indicated that ecosystem impacts cannot be mitigated, but need to be addressed. They cited the increase in knowledge about ecosystem management which has recently become available and indicated what is now needed is a combination of social and institutional decision-making that will allow communication and a clear vision. They do not believe the HCP provides that vision.

Response: The Services agree that better understanding will facilitate planning in the future. DNR's HCP, within economic constraints, addresses ecosystem function, riparian habitats, special habitats, and the full range of forest stages on the west side of the Cascades where coverage is provided for multiple species. On the east side, only certain listed species are addressed. The Service cannot require an applicant to provide coverage for additional species, only that the covered species be adequately addressed in terms of the Section 10 issuance criteria. The Services agree that an ecosystem-based approach to addressing multiple species is a preferred management scenario with benefits to both wildlife and long-term commodity production.

V. HUMAN ENVIRONMENT

C. CULTURAL

Summary: The Lummi Indian Nation said there is a trust responsibility for the federal agencies to work toward protection of access to other species and resources for cultural use by the Nation.

Response: The Services recognize their trust responsibilities toward the Tribes with respect to protecting wildlife and their habitats. The Services believe the conservation strategies present in the HCP will enhance and maintain habitats important to fish and wildlife species of interest to the Tribes.

VI. MANAGEMENT PRACTICES

A. AMOUNT OF HARVEST

Summary: The Elwha Klallam Tribe expressed concern about the expected rate of harvest of existing [owl] habitat in the short term, especially in consideration of the long "lag time" to regrow suitable [owl] habitat. They were particularly concerned about the lack of evidence to support the theory that second-growth forests can be managed to provide suitable [owl] habitat.

Response: The length of time to grow forests is a primary limiting factor with respect to restoring habitats. The HCP will be a benefit to wildlife species because it will enable DNR to make long-term decisions with certainty and return the forests to a healthier state where economic extraction can occur in a dynamic fashion in balance with wildlife habitats and other values.

C. HARVEST METHODS

Summary: The Colville Tribe said there was an inadequate assessment of selective harvest policies and its forest-health effects.

Response: The Services note that selective harvest may aggravate or alleviate forest-health problems depending on site-specific situations, the application of the techniques, and the perspective of forest health. Addressing this issue on the east side of the Cascades is beyond the scope of the HCP.

E. RIPARIAN MANAGEMENT STRATEGY

Summary: The Elwha Klallam Tribe noted that the riparian management strategy is well thought out and scientifically justified. The Tribe supported buffering the entire stream network (including Type 5 streams) across the landscape. They believed that the HCP will help ensure the recovery of riparian habitat and form the basis of salmonid recovery on state lands.

The Elwha Klallam Tribe requested that the management objectives be more clearly defined. Specifically, they noted that the HCP refers to "the maintenance and restoration of salmonid habitat" without defining what that means. They believed this was a critical point because approximately 70 percent of the stream miles covered by the OESF are estimated to have been converted to monotypic stands of young red alder and, as such, will require active restoration to approach the conditions found prior to management.

The Lummi Indian Nation stated that DNR has classified many Type 3 streams as Type 4, when in reality those streams were salmon-bearing streams. They recommended that

DNR retype streams to reflect reality and that the retyping be subject to tribal review and consultation.

Response: The Services acknowledge the value of the riparian strategy for salmonid recovery. The Services and DNR have clarified many of the issues surrounding the riparian strategy and have instituted an adaptive management approach toward riparian areas.

The Service believes that many landowners have mis-typed streams, particularly by failing to recognize fish presence in many smaller streams. The DNR will retype streams classified prior to 1992 and will treat those Type 4 streams conservatively in the interim. DNR believes that the streams typed since 1992 have been typed with a greater degree of accuracy. The draft HCP contains language (page IV.170, fifth paragraph) regarding the verification of stream types and updating the database.

I. GROWTH & FERTILIZATION

Summary: The Colville Tribe commented that wide-scale fertilization of forest lands has not been evaluated in the DEIS. Fertilization would likely result in increased stream pollution similar to that found in farmlands and would likely be detrimental to water quality and could be harmful to fish.

Response: See response to Water Quality on page 3-10 in Section 3.2.

J. THINNING

Summary: The Colville Tribe took exception to the statement that "Most forest stands in the east-side planning units are of uneven age and, therefore, do not require precommercial thinning." They believed this to be a false and misleading statement. Due to fire suppression over the last 60-90 years, stocking levels have increased dramatically and created the multi-storied stand structures common throughout the region. This has affected the water balance of these sites, caused stress in the trees, and created an insect and disease problem, as well as a catastrophic fire hazard. The change in these stands has also modified the habitats of the species endemic to the region and likely changed the distribution and abundance of species. These changes in the long run will contribute to the listing of additional species. In light of this information, precommercial thinning is a mandatory management action which should be implemented to restore these forests.

Response: DNR's draft HCP does address forest health issues on page IV.171-172. Underburning and a host of other activities may be used to address the issues of fire, disease, and insects. The Service agrees that forest health problems which are not addressed or exacerbated may lead to the listing of additional species.

K. SALVAGE

Summary: The Colville Tribe indicated that salvage to stop disease or insect infestations in effect stops the fundamental processes which cycle nutrients that maintain and build the soil, create habitat, and form landscape patterns and stand structures upon which species depend. From an HCP perspective, salvage is only acceptable after the needs of

ecosystem processes are fulfilled. They indicated there is a conflict in the document between existing state laws and the intent of the HCP which needs to be resolved.

Response: The HCP was amended upon negotiation with the Services to better address the potential conflict between the HCP objectives and state laws regarding salvage (see Appendix 3 of this document). For example, salvage operations might be considered by DNR for reasons such as windthrow, fire, disease, or insect infestation. In fact, state statutes pertaining to salvage and forest health may require DNR to take certain actions. If it is determined that such activities would adversely impact the HCP conservation strategies, DNR and the Services shall identify additional mitigation that would allow the necessary activities to go forward.

L. RESTORATION/RECLAMATION

Summary: The Elwha Klallam Tribe requested the management objectives be more clearly defined. Specifically, they noted that the HCP refers to "the maintenance and restoration of salmonid habitat" without defining what that means. They believe this was a critical point because approximately 70 percent of the stream miles covered by the OESF are estimated to have been converted to monotypic stands of young red alder and, as such, will require active restoration to approach the conditions found prior to management.

Response: The revised HCP provides a better description of objectives as described throughout Chapter IV. It does not prescribe how every action would be conducted because of site variability and the potential for new information and techniques to become available. Regarding the OESF, approximately 70 percent of the riparian areas are either alder or conifer forests younger than 30 years. It is clear that with or without restoration, it will take many decades to return to near normal conditions.

M. ROAD MANAGEMENT

Summary: The Skagit System Cooperative believed the road management strategy for the rest of the HCP area (exclusive of the OESF) does not meet management and environmental concerns.

Response: The lack of current information regarding roads has lead the Services and DNR to an agreement whereby a road-management plan would be developed in the first decade of the HCP which will address road location, construction, and maintenance standards, as well as landscape-level road issues such as density of open and closed roads.

P. OTHER PRACTICES

Summary: The Colville Tribe was concerned about the application of pesticides for insect control to protect timber values and indicated that spraying pesticides only treats the symptoms of a problem caused by unsound resource management policies and techniques (e.g., fire suppression). The negative effects of wide-spread pesticide application are well documented in the literature and are implicated at least partially in the severe decline of neotropical migrants.

Response: The Services agree that pesticide applications can have severe impacts. DNR has committed to retain their restrictive policies with regard to pesticide application. In addition, permit coverage for invertebrates would only be provided for aerial application upon approval of a site-specific plan by the Services. The Services agree that the preferred solution is to address the cause of severe outbreaks rather than widely applying insecticides.

VII. OTHER PLAN ELEMENTS

B. RESEARCH

Summary: The Skagit System Cooperative said the accuracy and adequacy of data about habitat for species (other than owls and murrelets) is very suspect and may be leading to erroneous fiscal and landscape conclusions. They used the tailed frog as an example of a species which has very specific habitat needs and might not be adequately addressed even if other species had been adequately addressed. The Cooperative stated that there are no specific plans tied to the HCP for gathering and evaluating data about each of the species and conditions targeted by the HCP.

Response: The HCP addresses a number of important forest-mangement questions that should benefit a host of species.

1. OESF

Summary: The Elwha Klallam Tribe notes that the entire premise of the OESF is based on untested theories, especially that stand conditions can be manipulated over space and time to provide habitat. From a risk analysis standpoint, they believe it is prudent to protect the most important habitat in its entirety and rebuild connections to this habitat. They indicated indirectly that they, therefore, preferred an approach similar to the zoned approach.

The Skagit System Cooperative took exception to the unique treatment of the OESF. They cited this as an example of data inequality, but also stated that it may reflect a different agenda. They specifically cited text from the HCP which states that the western Olympic Peninsula differs from other physiographic provinces in its unique combination of soil parent materials, precipitation and soil-saturation regimes, and windthrow characteristics. They disagreed with the "perception" this gives, provided an example of another area of the state with similar characteristics, and questioned why the OESF actions would not be conducted elsewhere. They believed that the solutions proposed for the OESF are more likely to succeed than the ones proposed for the rest of the state. Among other reasons, they cited Alternative B does not require buffers on Type 5 Waters, does require wind buffers in moderate potential for windthrow areas on the windward side only, and allows minimal or low harvest beyond the first 25 feet of the buffers. The Skagit System Cooperative also commented that the differences in road-management strategies further reflect the perception that the OESF is unique. They wrote the road-management strategy for the rest of the HCP area does not meet management and environmental concerns.

Response: Whether the OESF is “unique” is not the issue, but whether the prescription and strategies for the OESF are appropriate. The OESF will be treated differently than other planning units. The existence of areas which share some common characteristics will mean that the knowledge obtained on the OESF will have applicability elsewhere. Also at issue is, whether the prescriptions and strategies applied in the remainder of the west-side planning units are appropriate for the range of conditions found in those areas. Although the strategies employed may be different, the desired results are similar.

C. MONITORING/REPORTING

Summary: The Lummi Indian Nation wrote that the proposed monitoring is not adequate to deal with either the listed birds or the potentially listed salmon. They also criticized the monitoring as being primarily designed to allow relief in the form of relaxed mitigation.

The Elwha Klallam Tribe stated they were concerned about the lack of a strong monitoring component. They stated that this must be added and indicated this is another area for tribal cooperation. Without a monitoring component it will be very difficult to evaluate the overall success of the HCP.

The Skagit System Cooperative indicated the need for more details about the monitoring plan.

Response: The Services agree with the need for an adequate monitoring plan and intend to work with DNR in the development of such a plan. The Services have and will continue to coordinate with the Tribes during this process in fulfillment of the Services’ Trust Responsibilities.

VIII. IMPLEMENTATION ISSUES

J. CONTINGENCIES

3. Adaptive-Management Techniques

Summary: The Lummi Indian Nation said there is no requirement for increased mitigation should the monitoring reveal greatly enlarged impacts on salmon or incidental takes of the listed species. They desired greater responsiveness to the results of monitoring.

Response: The Services note that there is greater ability to respond and adapt to changing conditions and new information in the revised HCP. This is especially evident in the riparian strategy.

K. TERMINATION CLAUSE

Summary: The Lummi Indian Nation was disappointed with the provision for termination upon 30 days notice. They believed that such a provision would allow the state to make promises for mitigation in return for substantial harvest of timber and, once the harvest was complete, walk away from the agreement without meeting those promises.

Response: DNR would be required to mitigate for any take imbalance upon early termination. This is described in greater detail in Section 3.2 of this document and in the IA.

IX. RELATIONSHIPS TO OTHER LAND MANAGEMENT

A. RELATIONSHIP TO MANAGEMENT ON FEDERAL LANDS

Summary: The Elwha Klallam Tribe supported the strategy of providing owl habitat adjacent to federal reserves but had concerns about other areas. Specifically, the Tribe is concerned about the permanency of federal protection measures. Short-term changes in the "political landscape" have the potential to seriously undermine the carefully crafted system of federal reserves in the President's Northwest Forest Plan. The recent approval of the timber salvage rider bill is a prime example of this concern.

Response: The Services also believe the strategy of supporting federal reserves is sound, and likewise recognizes some of the inherent trade-offs--particularly in large landscapes which lack a federal ownership component.

While several timber sales have been authorized by Section 2001 of the 1995 Rescissions Act (P.L. 104-19), the Services do not believe that the biological integrity of the President's Northwest Forest Plan has been significantly compromised as a result. The President's Northwest Forest Plan calls for an extensive system of Late-Successional Reserves, protection of riparian reserves, the maintenance of dispersal habitat throughout federal lands, and a monitoring program aimed at ensuring the effectiveness and validity of the plan.

Timber sales harvested pursuant to P.L. 104-19 are not expected to seriously affect the role of the President's Northwest Forest Plan as the foundation for conserving late-successional forest species. The majority of the timber sales released by Section 2001(k) of P.L. 104-19 were located in Oregon. Most of the 2001(k) sales that occurred in Washington were previously consulted on under the Endangered species Act for spotted owls and, from the owl's perspective, were considered harvested when the Service completed Section 7 consultation for spotted owls on the President's Northwest Forest Plan. Therefore, harvest of the 2001(k) sales in Washington have caused few impacts to northern spotted owls that were not previously considered by the Service. Likewise, a relatively small amount of suitable murrelet habitat was harvested as a result of P.L. 104-19, and all known occupied nesting habitat was protected consistent with the standards and guidelines of the President's Northwest Forest Plan and Section 2001(k)(2) of P.L. 104-19.

X. THIRD-PARTY INVOLVEMENT

A. TREATY RIGHTS AND THE FEDERAL TRUST RESPONSIBILITY

Summary: The Lummi Indian Nation objected strongly to the process currently underway to provide federal approval of DNR's proposed HCP covering timber harvests on lands critical for the production of resources reserved to the Tribes by treaty. They

believed this to be a clear violation of the Federal Trust Responsibilities, existing court decisions, and statutory mandates to protect resources reserved for the use of the Tribes.

The Lummi Indian Nation strongly disagreed with the manner in which consultation is being carried out by the Services with reference to DNR's HCP proposal and cited the Presidential Memorandum and the Secretarial Order on this subject. Specifically, they listed determinations that must be made regarding management measures which may affect the exercise of treaty rights.

Response: The Services have met, and will continue to meet, their trust responsibility to Native American Tribes. The Services have acted in accordance with the Presidential Memorandum and Secretarial Order. The Services have coordinated with Tribal fisheries experts through the Northwest Indian Fisheries Commission during preparation of the draft EIS as well as throughout the negotiation period. On June 12, 1996, the Services met with a number of Tribes and their representatives to discuss trust responsibility issues in regard to DNR's HCP. The Services recognize that the HCP program is new and there is still considerable misunderstanding regarding the issues surrounding the program. The Services plan to improve the understanding by all parties and to improve the mechanisms used to coordinate with the Tribes regarding trust resources and the actions which may affect them. See Section 3.2.X.B in this document.

B. TRUST RESPONSIBILITY TO TRIBES

Summary: The Lummi Indian Nation stated that each federal agency has a trust responsibility to Native American Tribes which cannot be avoided by reliance on flawed environmental studies by the state and accommodation of state interests in derogation of fiduciary duties of the federal government. Specifically, there is a trust responsibility for the federal agencies to work toward protection of a harvestable surplus of salmon and steelhead and protection of access to other species and resources for cultural use by the Nation. The HCP proposed by DNR seeks only to protect viable populations. It is totally silent on protecting harvestable surpluses.

The Skagit System Cooperative indicated, for anadromous salmonids, that the goal should be maintaining the stocks at levels adequate to provide for a viable Tribal fishing industry.

Response: The intent of the conservation strategies is to promote riparian function at normal levels. This should result in harvestable surpluses if other factors affecting salmonids are fully addressed in the rivers and the oceans and on other ownerships. The Services believe this HCP will benefit the salmonid resource and, as such, should benefit the Tribes.

XI. TRUST BENEFICIARIES

B. OBLIGATION TO FUTURE GENERATIONS

Summary: The Colville Tribe stated that it is necessary to align the production capability of the land to provide goods and services with the capacity of the land to produce over

time. They stated, "In essence we need to harvest the golden eggs without killing the goose."

Response: The Services agree with the commentor.

XII. PUBLIC INVOLVEMENT

B. COORDINATION

1. Tribes

Summary: The Lummi Indian Nation cited the U.S. Supreme Court in U.S. vs. Washington (1974) and related cases and said those cases provided that the Lummi Nation is a co-manager with the State of Washington and other Tribes in the Nation's usual and accustomed fishing grounds and stations. They proposed that where details of implementation are postponed for future planning or review the Nation be provided a role. They indicated that the HCP and IA failed to recognize a role for Tribal co-management and also failed to recognize the role of "the State's own primary management agency for salmon" [WDFW].

The Elwha Klallam Tribe formally requested that it be closely involved in the implementation of the HCP, including the development of the details which remain to be addressed in the future. They indicated that the monitoring plan, which still requires work, is another area for tribal cooperation.

The Skagit System Cooperative indicated that the lack of specifics with regard to implementation, monitoring, and adjusting lead one to distrust the success of the plan. The progress and changes that have taken place since the Forest Practice Rules and Regulations were first adopted 22 years ago, or for that matter since the Timber, Fish and Wildlife agreement was signed 9 years ago, should demonstrate the improvement possible in a few years in terms of understanding and management of all resources. They stated that it is irresponsible from both a scientific and a management perspective to lock into a plan as broad and vague as DNR's HCP.

Response: The Services began coordination with Tribal entities at an early stage in this process. The Services encourage further discussion regarding improvement of the process by which such coordination has occurred on this HCP-development process and will occur in the future. As the Services develop HCPs with future applicants and as issued permits and their respective HCPs are implemented, the Services look forward to a long and mutually beneficial relationship with the Tribes and hope to utilize their biological expertise to the benefit of the Services, the Tribes, and the resource.

XIII. NEPA/SEPA COMMENTS

E. ADEQUACY OF DOCUMENTS

Summary: The Lummi Indian Nation stated that the DEIS was severely flawed and cited the comments of other Tribes. The Colville Tribe indicated that, given the size and

technical complexity of the draft HCP and DEIS, an index would facilitate access to specific information. They also questioned whether Section 4.3 was included in the DEIS.

Response: Section 4.3 was included in the DEIS. The Services note the complexity of the document as well as the issues, but believe the DEIS adequately analyzed the provisions of the HCP.

XIV. APPROVAL/DISAPPROVAL

Summary: The Skagit System Cooperative stated that it is irresponsible from both a scientific and a management perspective to lock into a plan as broad and vague as DNR's HCP.

Response: Comment noted.

XV. MISCELLANEOUS COMMENTS

Summary: The Lummi Indian Nation cited the comments of other Tribes regarding the DEIS.

Response: Comments received from the Tribes were considered and included in this subsection. The Services note the support of the other commentators by the Lummi Indian Nation.

I. REMARKS REGARDING DNR HISTORY

Summary: The Elwha Klallam Tribe said it was refreshing to see that DNR has recognized the extent of past damages that have occurred on state lands and its important role in fostering recovery across the landscape.

Response: Comments noted.

XVI. THE HCP PROCESS

A. HABITAT CONSERVATION PLANS

Summary: The Lummi Indian Nation supported the concept of habitat conservation plans.

Response: The Services appreciate the support and look forward to continued and improved coordination with the Nation and other Tribes.

